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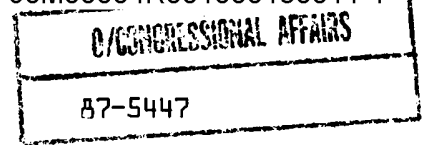
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**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

October 21, 1987

LEGISLATIVE REFERRAL MEMORANDUM



SPECIAL

TO: SEE ATTACHED DISTRIBUTION LIST

OCA FILE *Leg*

SUBJECT: Draft congressional amendment (in the nature of a substitute) to S.496, the Computer Matching and Privacy Protection Act.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

FRIDAY - OCTOBER 30, 1987

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.


James C. Murry for
Assistant Director for
Legislative Reference

Enclosure

cc: Rob Veeder
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October 5, 1987

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 496
OFFERED BY _____

Strike out all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the ``Computer Matching and
3 Privacy Protection Act of 1987``.

4 SEC. 2. MATCHING AGREEMENTS.

5 Section 552a of title 5, United States Code, is amended--

6 (1) by redesignating subsections (o), (p), and (q) as
7 subsections (r), (s), and (t), respectively, and

8 (2) by inserting after subsection (n) the following
9 new subsections:

10 `` (o) MATCHING AGREEMENTS.--(1) No record which is
11 contained in a system of records may be disclosed to a
12 recipient agency or non-Federal matching entity for use in a
13 computer matching program except pursuant to a written
14 agreement between the source agency and the recipient agency
15 or non-Federal matching entity specifying--

16 `` (A) the purpose and legal authority for conducting
17 the program;

18 `` (B) the justification for the program and the

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1 anticipated results, including a specific estimate of any
2 savings;

3 `` (C) a description of the records that will be
4 matched, including each data element that will be used,
5 the approximate number of records that will be matched,
6 and the projected starting and completion dates of the
7 matching program;

8 `` (D) procedures for providing individualized notice
9 at the time of application, and periodically thereafter
10 as directed by the Data Integrity Board of such agency
11 (subject to guidance provided by the Director of the
12 Office of Management and Budget pursuant to subsection
13 (v)), to--

14 `` (i) applicants for and recipients of financial
15 assistance or payments under Federal benefit
16 programs, and

17 `` (ii) applicants for and holders of positions as
18 Federal personnel,
19 that any information provided by such applicants,
20 recipients, holders, and individuals may be subject to
21 verification through matching programs;

22 `` (E) procedures for verifying information produced
23 in such matching program as required by subsection (p);

24 `` (F) procedures for the timely destruction of
25 identifiable records created by a recipient agency or non-

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1 Federal matching entity in such matching program;

2 `` (G) procedures for ensuring the administrative,
3 technical, and physical security of the records matched
4 and the results of such programs;

5 `` (H) prohibitions on duplication and redisclosure of
6 records provided by the source agency within or outside
7 the recipient agency or the non-Federal matching entity;

8 `` (I) procedures governing the use of the records
9 provided in a matching program by the source agency,
10 including procedures governing return to the source
11 agency or destruction of the records used in such
12 program;

13 `` (J) information on assessments that have been made
14 on the accuracy of the records that will be used in such
15 matching program; and

16 `` (K) that the Comptroller General may have access to
17 all records of a recipient agency or a non-Federal
18 matching entity that the Comptroller General deems
19 necessary in order to monitor or verify compliance with
20 the agreement.

21 `` (2)(A) A copy of each agreement entered into pursuant
22 to paragraph (1) shall--

23 `` (i) be transmitted to the Committee on Governmental
24 Affairs of the Senate and the Committee on Government
25 Operations of the House of Representatives; and

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1 ``(ii) be available upon request to the public.

2 ``(B) No such agreement shall be effective until 30 days
3 after the date on which such a copy is transmitted pursuant
4 to subparagraph (A)(i), and shall not continue to be
5 effective for more than one year thereafter.

6 ``(p) VERIFICATION AND OPPORTUNITY TO CONTEST
7 FINDINGS.--(1) In order to protect any individual whose
8 records are used in matching programs, no recipient agency,
9 non-Federal matching entity, or source agency may suspend,
10 terminate, reduce, or make a final denial of any financial
11 assistance under a Federal benefit program to such
12 individual, or take other adverse action against such
13 individual as a result of information produced by such
14 matching programs, until an office or employee of such agency
15 or entity has independently verified such information.
16 Subject to the requirements of this subsection, such
17 independent verification may be satisfied by verification
18 requirements governing such Federal benefit program.

19 ``(2) Independent verification required by paragraph (1)
20 shall include nonautomated confirmation of--

21 ``(A) the amount of the asset or income involved,

22 ``(B) whether such individual actually has or had
23 access to such asset or income for such individual's own
24 use,

25 ``(C) the period or periods when the individual

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1 actually had such asset or income, and

2 `` (D) any other information used as a basis for an
3 adverse action against an individual.

4 `` (3) No recipient agency, non-Federal matching entity,
5 or source agency may suspend, terminate, reduce, or make a
6 final denial of any financial assistance or payment under a
7 Federal benefit program to any individual described in
8 paragraph (1), or take other adverse action against such
9 individual as a result of information produced by a matching
10 program, until 60 days after such individual receives a
11 notice from such agency or entity containing a statement of
12 its findings and informing the individual of the opportunity
13 to contest such findings. Such opportunity may be satisfied
14 by notice, hearing, and appeal rights governing such Federal
15 benefit program. The exercise of any such rights shall not
16 affect any rights available under this section.

17 `` (q) SANCTIONS.--Notwithstanding any other provision of
18 law, no source agency may disclose any record which is
19 contained in a system of records to a recipient agency or
20 non-Federal matching entity for a matching program if such
21 source agency has reason to believe that the requirements of
22 subsection (p) and any matching agreement entered into
23 pursuant to subsection (o) are not being met by such
24 recipient agency or entity. No source agency may enter into
25 any renewal of a matching agreement unless--

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1 ``(1) the recipient agency or non-Federal matching
2 entity has certified that it has complied with the
3 provisions of that agreement; and
4 ``(2) the source agency has taken reasonable actions
5 to verify such compliance.''.
6

6 SEC. 3. NOTICE OF MATCHING PROGRAMS.

7 (a) NOTICE IN FEDERAL REGISTER.--Subsection (e) of
8 section 552a of title 5, United States Code, is amended--
9 (1) by striking out ``and'' at the end of paragraph
10 (10),

11 (2) by striking out the period at the end of
12 paragraph (11) and inserting in lieu thereof ``; and'',
13 and

14 (3) by adding at the end thereof the following new
15 paragraph:

16 ``(12) if such agency is a recipient agency or a
17 source agency in a matching program with a non-Federal
18 matching entity, with respect to any establishment or
19 revision of a matching program, at least 30 days prior to
20 conducting such program, publish in the Federal Register
21 notice of such establishment or revision.''.
22

23 (b) REPORT TO CONGRESS AND OFFICE OF MANAGEMENT AND
24 BUDGET.--

24 (1) IN GENERAL.--Subsection (r) of section 552a of
25 title 5, United States Code, as redesignated by section

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1 2(b)(1) of this Act, is amended by striking out ``system
2 of records`` and inserting in lieu thereof ``system of
3 records or matching program``.

4 (2) CLERICAL AMENDMENT.--The heading of such
5 subsection (r) is amended by inserting ``OR PROGRAMS``
6 after ``SYSTEMS``.

7 SEC. 4. DATA INTEGRITY BOARD.

8 Section 552a of title 5, United States Code, as amended
9 by section 2(b)(1) of this Act, is amended by adding at the
10 end thereof the following new subsection:

11 `` (u) DATA INTEGRITY BOARDS.--(1) Every agency conducting
12 or participating in a matching program shall establish a Data
13 Integrity Board to oversee and coordinate among the various
14 components of such agency the agency's implementation of this
15 section.

16 `` (2) Each Data Integrity Board shall consist of senior
17 officials designated by the head of the agency, and shall
18 include any senior official designated by the head of the
19 agency as responsible for implementation of this section, and
20 the inspector general of the agency, if any. The inspector
21 general shall not serve as chairperson of the Data Integrity
22 Board.

23 `` (3) Each Data Integrity Board shall--

24 `` (A) review, approve, and maintain all written
25 agreements for receipt or disclosure of agency records

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1 for matching programs to ensure compliance with
2 subsection (o), and all relevant statutes, regulations,
3 and guidelines;

4 `` (B) review all matching programs in which the
5 agency has participated during the year, either as a
6 source agency or recipient agency, determine compliance
7 with applicable laws, regulations, and agency agreements,
8 and assess the cost-benefits of such programs;

9 `` (C) review all recurring matching programs in which
10 the agency has participated during the year, either as a
11 source agency or recipient agency, for continued
12 justification for such disclosures;

13 `` (D) compile an annual report, which shall be
14 submitted to the head of the agency and the Office of
15 Management and Budget and made available to the public on
16 request, on the matching activities of the agency,
17 including--

18 `` (i) matching programs in which the agency has
19 participated as a source agency or recipient agency;

20 `` (ii) matching agreements proposed under
21 subsection (o) that were disapproved by the Board;

22 `` (iii) any other program required by standards
23 prescribed by the Director of the Office of
24 Management and Budget to be included in such report;
25 and

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1 ``(iv) any violations of matching agreements that
2 have been alleged or identified and any corrective
3 action taken;

4 ``(E) serve as a clearinghouse for receiving and
5 providing information on the accuracy, completeness, and
6 reliability of records used in matching programs;

7 ``(F) provide interpretation and guidance to agency
8 components and personnel on the requirements of this
9 section with respect to matching programs;

10 ``(G) review agency recordkeeping and disposal
11 policies and practices with regard to matching programs
12 to assure compliance with this section; and

13 ``(4) A Data Integrity Board shall not approve any
14 written agreement for a matching program unless the agency
15 has completed and submitted a cost-benefit analysis of the
16 proposed program and such analysis demonstrates that the
17 program is likely to be cost effective. The Board may waive
18 the requirements of this paragraph if it determines in
19 writing, in accordance with guidelines prescribed (after 30
20 days notice and opportunity for public comment) by the
21 Director of the Office of Management and Budget, that a cost-
22 benefit analysis is not required.

23 ``(5) If the Data Integrity Board disapproves a matching
24 program proposed by the inspector general of an agency, the
25 inspector general may report the disapproval to the head of

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1 the agency and to the Congress.

2 `` (6) The Director of the Office of Management and Budget
3 shall, annually during the first 3 years after the date of
4 enactment of this subsection and biennially thereafter,
5 consolidate in a report to the Congress the information
6 contained in the reports from the various Data Integrity
7 Boards under paragraph (3)(D). Such report shall include
8 detailed information about costs and benefits of matching
9 programs that are conducted during the period covered by such
10 consolidated report.``.

11 SEC. 5. DEFINITIONS.

12 Subsection (a) of section 552a of title 5, United States
13 Code, is amended--

14 (1) by striking out ``and`` at the end of paragraph
15 (6),

16 (2) by striking out the period at the end of
17 paragraph (7) and inserting in lieu thereof a semicolon,
18 and

19 (3) by adding at the end thereof the following new
20 paragraphs:

21 `` (8) the term `matching program`--

22 `` (A) means any computerized comparison of--

23 `` (i) two or more automated systems of
24 records or a system of records with non-Federal
25 records for the purpose of--

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1 ``(I) establishing or verifying the
2 eligibility of, or continuing compliance with
3 statutory and regulatory requirements by,
4 applicants for, recipients or beneficiaries
5 of, participants in, or providers of services
6 with respect to, financial assistance or
7 payments under Federal benefit programs, or
8 ``(II) recouping payments or delinquent
9 debts under such Federal benefit programs, or
10 ``(ii) two or more automated Federal
11 personnel or payroll systems of records or a
12 system of Federal personnel or payroll records
13 with non-Federal records,
14 ``(B) but does not include--
15 ``(i) matches performed to produce aggregate
16 statistical data without any personal
17 identifiers;
18 ``(ii) matches performed to support any
19 research or statistical project, the specific
20 data of which may not be used to make decisions
21 concerning the rights, benefits, or privileges of
22 specific individuals;
23 ``(iii) matches performed by a Federal agency
24 in which no records are matched outside such
25 Federal agency or any component thereof, unless

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1 those matches involve a comparison of the source
2 agency's personnel or payroll records with the
3 records of a Federal benefit program administered
4 by that agency ;

5 ``(iv) matches performed subsequent to the
6 initiation of a specific criminal law enforcement
7 investigation by an agency or component thereof,
8 which performs as its principal function any
9 activity pertaining to the enforcement of
10 criminal laws, for the purpose of gathering
11 evidence for a prospective law enforcement
12 proceeding against named individuals;

13 ``(v) matches of tax information pursuant to
14 section 6103(d) of the Internal Revenue Code of
15 1986; or

16 ``(vi) matches performed to produce
17 background checks for security clearance of
18 Federal personnel;

19 ``(9) the term `recipient agency' means any agency,
20 or contractor thereof, receiving records contained in a
21 system of records from a source agency for use in a
22 matching program;

23 ``(10) the term `non-Federal entity' means any State
24 or local government, or agency thereof, which receives
25 records contained in a system of records from a source

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1 agency for use in a matching program;

2 `` (11) the term 'source agency' means any agency
3 which discloses records contained in a system of records
4 to be used in a matching program, or any State or local
5 government, or agency thereof, which discloses records to
6 be used in a matching program;

7 `` (12) the term 'Federal benefit program' means any
8 program administered by the Federal Government, or any
9 agent thereof, providing cash or in-kind assistance in
10 the form of payments, grants, loans, or loan guarantees
11 to individuals; and

12 `` (13) the term 'Federal personnel' means officers
13 and employees of the Government of the United States,
14 members of the uniformed services (including members of
15 the Reserve Components), individuals entitled to receive
16 immediate or deferred retirement benefits under any
17 retirement program of the Government of the United States
18 (including survivor benefits).``.

19 **SEC. 6. INJUNCTIVE RELIEF.**

20 The first sentence of section 552a(g)(3)(A) is amended to
21 read as follows: ``Under the provisions of paragraph (1)(B)
22 of this subsection, the court may enjoin the agency from
23 withholding the records, order the production to the
24 complainant of agency records improperly withheld, and enjoin
25 the agency from otherwise violating the provisions of this

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1 section.''.
2

3 **SEC. 7. FUNCTIONS OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT
4 AND BUDGET.**

5 (a) **AMENDMENT.**--Section 552a of title 5, United States
6 Code, is further amended by adding at the end thereof the
7 following:

8 **``(v) OFFICE OF MANAGEMENT AND BUDGET**

9 **RESPONSIBILITIES.**--The Director of the Office of Management
10 and Budget shall--

11 **``(1) develop and, after notice and opportunity for**
12 **public comment, prescribe guidelines and regulations for**
13 **the use of agencies in implementing the provisions of**
14 **this section; and**

15 **``(2) provide continuing assistance to and oversight**
16 **of the implementation of this section by agencies.''.
17**

18 (b) **IMPLEMENTATION GUIDANCE FOR AMENDMENTS.**--The Director
19 shall, pursuant to section 552a(v) of title 5, United States
20 Code, develop guidelines and regulations for the use of
21 agencies in implementing the amendments made by this Act not
22 later than 6 months after the date of enactment of this Act.

23 (c) **CONFORMING AMENDMENT.**--Section 6 of the Privacy Act
24 of 1974 is repealed.

25 **SEC. 8. COMPILATION OF RULES AND NOTICES.**

Section 552a(f) of title 5, United States Code, is
amended by striking out ``annually'' in the last sentence and

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1 inserting ``biennially``.

2 SEC. 9. ANNUAL REPORT.

3 Subsection (s) of section 552a of title 5, United States
4 Code (as redesignated by section 2 of this Act), is amended--

5 (1) by striking out ``ANNUAL`` in the heading of such
6 subsection and inserting ``BIENNIAL``;

7 (2) by striking out ``annually submit`` and inserting
8 ``biennially submit``;

9 (3) by striking out ``preceding year`` and inserting
10 ``preceding 2 years``; and

11 (4) by striking out ``such year`` and inserting
12 ``such years``.

13 SEC. 10. RULES OF CONSTRUCTION.

14 Nothing in the amendments made by this Act shall be
15 construed to authorize--

16 (1) the establishment or maintenance by any agency of
17 a national data bank that combines, merges, or links
18 information on individuals maintained in systems of
19 records by other Federal agencies;

20 (2) the direct linking of computerized systems of
21 records maintained by Federal agencies;

22 (3) the computer matching of records not otherwise
23 authorized by law; or

24 (4) the disclosure of records for computer matching
25 except to a Federal, State, or local agency.

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1 SEC. 11. EFFECTIVE DATES. *

2 (a) IN GENERAL.--Except as provided in subsection (b),
3 the amendments made by this Act shall take effect six months
4 after the date of enactment of this Act.

5 (b) INJUNCTIVE RELIEF.--The amendment made by sections 6,
6 7, 8, and 9 of this Act shall take effect upon enactment.